MADRAS ACT No. II OF 1904.[1]

[THE MADRAS IMPARTIBLE ESTATES ACT, 1904.]

[*8th March* 1904.]

An Act to declare that certain [2] estates are impartible and that the proprietors of such estates cannot exercise unrestricted powers of alienation in respect thereof.

WHEREAS it is expedient to amend the law in regard to the impartibility and inalienability of certain estates ; It is hereby enacted as follows :— Preamble.

1. (1) This Act may be called the Madras Impartible Estates Act, 1904. Short title.

(2) It extends to the whole of the Presidency of Madras except the districts of Malabar and South Kanara. Extent.

Madras Act II of 1902. Madras Act II of 1903.

(3) On this Act coming into force, the Madras Impartible Estates Act, 1902, and the Madras Impartible Estates Act Continuance Act, 1903, shall be repealed. Repeal.

2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

(1) " Alienation " includes a temporary transfer such as a mortgage or a lease. " Alienation."

(2) " Impartible estate " means an estate descendible to a single heir and subject to the other incidents of impartible estates in Southern India. " Impartible estate."

(3) " Proprietor of an impartible estate " means the person entitled to possession thereof as single heir under the special custom of the family or locality in which the estate is situated or if there be no such family or local custom under the general custom regulating the succession to impartible estates in Southern India. " Proprietor of an impartible estate."

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[1] For Statement of Objects and Reasons, *see Fort St. George Gazette*, 1903, Part IV, p. 343 ; for Report of the Select Committee, *see ibid*, Part IV, p. 383 ; and for Proceedings in Council, *see ibid*, 1903, Part IV, p. 364 ; and *ibid*, 1904, Part IV, p. 49.

This Act will cease to be in force in estates notified under the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Madras Act XXVI of 1948), by virtue of section 66 of that Act.

[2] See also :—
Madras Act II of 1918.
Madras Act VII of 1926.
Madras Act V of 1928.
Madras Act VIII of 1929.
Madras Act IX of 1929.
Madras Act IX of 1930.
Madras Act I of 1933.
Madras Act II of 1933.
Madras Act IX of 1933.

[1] [For the purposes of clause(*c*) of sub-section(2) of section 4 and of sub-section (3) of that section, " estate " means—

(1) any permanently settled estate, whether a Zamindari, Jaghir, Mitta or Palaiyam ;

(2) any portion of such permanently settled estate which has been separately registered in the office of the Collector ;

(3) any unsettled Palaiyam or Jaghir ;

(4) any inam village of which the grant was made or confirmed by the [2][ ] Government ; or

(5) any portion consisting of one or more villages, of any of the estates specified above in clauses (1), (2) and (3), which is held on a permanent under-tenure.]

Estates deemed impartible.

3. The estates included in the schedule shall be deemed to be impartible estates.

Restriction on alienations of impartible estates.

4. (1) The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his own lifetime unless the alienation shall be made, or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other co-parceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other co-parceners independently of their consent.

Permissible alienations.

(2) In particular and without prejudice to the generality of the foregoing provisions, the proprietor of an impartible estate is hereby expressly authorized—

(*a*) to grant sites for public charitable and public religious institutions ; [3]

(*b*) to grant mining or quarrying leases for terms not exceeding sixty years and leases of the pannai or home farm lands for terms not exceeding fifteen years, provided that every such lease—

(i) shall be by registered deed and shall be made to take effect in possession not later than twelve months after its date ;

(ii) shall reserve the best rent that can reasonably be obtained, regard being had to any money laid out or to be laid out by the lessee for the benefit of the estate, but not to any fine or premium paid or to be paid in consideration of granting such lease ;

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[1] The paragraph within square brackets was added by section 2 of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act III of 1934).

[2] The word " British " was omitted by the Adaptation (Amendment) Order of 1950.

[3] In the application of the Act to the Agency tracts the following has been added at the end of this clause :—

' or for any purpose which in the opinion of the Local Government is either directly or indirectly beneficial or is likely to be directly or indirectly beneficial to the estate.' *See* Notification No. 334, published at pages 1861-1862 of Part I of the *Fort St. George Gazette*, dated 4th December 1928.

(iii) shall contain a covenant by the lessee for payment of rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding three months ;

(iv) if a mining or quarrying lease, may make the rent ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of in or from such estate, or any other land, or by or according to any facilities given in that behalf, and may reserve a fixed or minimum rent with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent ;

[1] [(*c*) (i) to exchange the impartible estate or any part or parts thereof for an estate or estates or part or parts of an estate or estates ; and

(ii) to sell the impartible estate or any part or parts thereof and acquire with the proceeds of such sale an estate or estates or part or parts of an estate or estates :

Provided that the Collector of the district in which the impartible estate which is to be exchanged or sold or the part or parts thereof which is or are to be exchanged or sold is or are situated, has granted a certificate, or where the impartible estate or part or parts thereof affected is or are situated in more than one district, the Collectors of all the districts concerned have granted a certificate, to the effect that the transaction of exchange or of sale and acquisition, as the case may be, is advantageous to and for the benefit of the impartible estate or, where the Collector or any of the Collectors concerned have refused to grant such a certificate, the Board of Revenue, on appeal made to it within a time to be prescribed by rules under sub-section (4), has granted a certificate to the effect that the transaction is advantageous to and for the benefit of the impartible estate.]

[2] [(3) The estate or estates or part or parts of an estate or estates obtained in exchange for or acquired with the proceeds of the sale of an impartible estate or any part or parts thereof under clause (*c*) of sub-section (2) shall, for all the purposes of this Act, be deemed to be an impartible estate or to form part or parts of the impartible estate, as the case may be.]

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[1] This clause was added by section 3 of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act III of 1934).

[2] Sub-sections (3) and (4) were inserted by *ibid.*

[1][(4) The [2][State Government] may make rules for regulating the grant of certificates under the proviso to clause (*c*) of sub-section (2) and generally for carrying out the purposes of the said clause.]

Exception.

[3][(5) Nothing in this section shall be construed to restrict the power of the owner of an impartible estate to provide for the succession thereto in default of heirs.

Procedure in regard to grant of certain leases.

5. When the proprietor of an impartible estate proposes to grant any such lease as specified in section 4, sub-section (2), clause (*b*), it shall be lawful of such proprietor or the intending lessee to submit a draft of the proposed lease to the Board of Revenue for approval, and the Board, if satisfied after making such inquiry and giving such notices as it thinks fit, that the terms of such draft lease are in accordance with the provisions of this Act, may approve thereof and affix its seal thereto in token of approval; and if the proprietor shall thereafter execute the lease in the terms of the draft lease so approved and sealed, such lease shall be deemed to have been duly granted in accordance with the provisions of this Act.

Conditions of alienations of impartible estates for payment of land revenue due to Government.

6. Notwithstanding anything herein before contained, the proprietor of an impartible estate shall be incapable of alienating, or binding by his debts such estate or any part thereof beyond his own lifetime for the payment of land-revenue due to Government, unless he shall have first obtained the consent in writing of the Collector of the district in which the estate is situated. Such consent shall not be refused unless in the opinion of the Collector the case is one in which the land-revenue due to Government may be realized by management of the estate under the provisions of the Madras Revenue Recovery Act, 1864. Madras Act II of 1864.

Saving clause.

7. This Act shall not affect alienations made or debts incurred before the coming into force of this Act, and shall cease to apply to estates or parts of estates which may hereafter be lawfully alienated otherwise than by temporary transfer.

Computation of period of limitation.

8. (1) In computing the period of limitation applicable to suits and legal proceedings other than suits stayed and to appeals barred by the Madras Impartible Estates Act, 1902, the period during which such suits, proceedings or appeals were stayed or barred by the said Act shall be excluded, and all such suits, proceedings and appeals shall be deemed to have been actively prosecuted during such period within the meaning of section 52 of the Transfer of Property Act, 1882. Madras Act II of 1902. Central Act IV of 1882.

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[1] Sub-sections (3) and (4) were inserted by the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act III of 1934), s. 3 (2).

[2] The words "Provincial Government" were substituted for the words "Local Government" by the Adapation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[3] The original sub-section (3) was renumbered as (5) by the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act III of 1934), s. 3 (2).

Madras Act II of 1903.

(2) If in any suit, proceeding or appeal permitted to proceed by the Madras Impartible Estates Act Continuance Act, 1903, it be finally decided that any estate named in the Schedule attached to this Act is partible, such estate shall be deemed not to have been mentioned in the Schedule. Exclusion of estates declared partible.

[1] [9. Where for the purpose of ascertaining the succession to an impartible estate, the estate has to be regarded as the property of a joint Hindu family, the following persons shall have a right of maintenance out of the impartible estate and its income, namely ;— Persons entitled to maintenance out of the impartibe estate.

(*a*) the son, grandson, or [2] great-grandson, in the male line, born in lawful wedlock or adopted, of the proprietor of the impartible estate or of any previous proprietor thereof :

Provided that where maintenance is payable to a son or grandson, by or under any decree or order of court, award, contract, family arrangement or other instrument in writing, and such instrument, expressly or by necessary implication, makes it clear that the maintenance is payable to such son or grandson as representing his branch of the family, which shall not be open to a son or grandson of such son, or to a son of such grandson, as the case may be, during the period for which such maintenance is payable, to claim maintenance either in his individual right or as representing his branch of the family ;

(*b*) the widow of any previous proprietor of the impartible estate so long as she does not remarry ;

(*c*) the widow of the son, grandson or great-grandson of the proprietor of the impartible estate or of any previous proprietor thereof, so long as she does not remarry, provided she has no son or grandson living ;

(*d*) the unmarried daughter born in lawful wedlock of the proprietor of the impartible estate or any previous proprietor thereof ; and

(*e*) the unmarried daughter, born in lawful wedlock, of a son or grandson of the proprietor of the impartible estate or of any previous proprietor thereof, provided she has neither father nor mother nor a brother living.

Explanation.—Maintenance shall, where necessary, include a provision for residence and in the case of an unmarried daughter of the proprietor or any previous proprietor, a provision for the expenses of her marriage in accordance with the scale customary in the family.]

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[1] Sections 9 to 15 were added by section 2 of the Madras Impartible Estates (Second Amendment) Act, 1934 (Madras Act XII of 1934).

[2] *See* section 25 (1) of the Indian Succession Act, 1925 (Central Act XXXIX of 1925).

Amount of maintenance.

[1] [**10.** (1) In determining the amount of maintenance payable to any of the persons mentioned in section 9, the court shall *inter alia* have regard to the following considerations, namely :—

(i) the net income of the estate ;

(ii) the number of persons to be maintained out of the estate ;

(iii) the nearness of relationship of the person claiming to be maintained ;

(iv) the other sources of income of the claimant ; and

(v) the circumstances of the family of the claimant.

(2) The court shall so fix the amount of such maintenance that the total amount payable out of the estate by way of maintenance to the relations mentioned in section 9 shall not exceed one-fifth of the net income.

Family arrangements in satisfaction of claim to maintenance.

11. Notwithstanding anything contained in this Act, the proprietor of an impartible estate shall have power to enter into a *bona fide* family arrangement whereby in full satisfaction of the claim for maintenance of a particular branch, any property other than the impartible estate is allotted to that branch, and where such an arrangement has been entered into, no member of such a branch shall have any right after such arrangement to claim any maintenance from the estate.

Right to maintenance under law or custom not to be affected.

12. Nothing contained in this Act shall affect the right to maintenance out of an impartible estate and the income thereof, of any other relations of the proprietor or any previous proprietor under any law or custom for the time being in force.

Power to declare maintenance to be a charge.

13. The award of maintenance under section 9 may be declared a charge upon any portion of an impartible estate or the income thereof.

Power of court to vary maintenance.

14. (1) Any decree for maintenance passed under this Act may be varied by the court, if any of the facts and circumstances referred to in section 10 have undergone a material change.

(2) Where the rate of maintenance periodically payable to any person mentioned in section 9 out of an impartible estate has been fixed by a decree or order of court, family arrangement, award, contract or other instrument in writing, whether before or after the commencement of the Madras Impartible Estates (Second Amendment) Act, 1934, it shall be lawful for the court to reduce such rate of maintenance in order to provide maintenance for new claimants and to adjust it within the limits specified in sub-section (2) of section 10.] Madras Act XII of 1934.

[1] Sections 9 to 15 were added by section 2 of the Madras Impartible Estates (Second Amendment) Act, 1934 (Madras Act XII of 1934).

Madras Act XII of 1934.

[1] [**15.** Save as provided in section 14, nothing contained in sections 9 to 14, shall affect any contract, arrangement, award or decree of court entered into or made before the date of the commencement of the Madras Impartible Estates (Second Amendment) Act, 1934 : Sections 9 to 14 not to affect prior contracts, etc.

Provided that no decree made prior to the passing of the Madras Impartible Estates (Second Amendment) Act, 1934, negativing the right of any person to maintenance claimed in his own right or as representing his branch shall debar his descendants declared entitled to maintenance under section 9 from claiming such maintenance.]

SCHEDULE.

North Arcot.

1. Kalahasti.
2. Karvetnagar.
3. Punganuru.
4. Kangundi.
5. Bangari Palaiyam.
6. Naraganti Palaiyam.
7. Vallivedu and Kamavaram Divisions of Pulicherla Palaiyam.
8. Gudipati Palaiyam.
9. Tunba Palaiyam.
10. Kalluru Palaiyam.

[2] [11. Arni Jagir.]

South Arcot.

1. Vettavalam.
2. Kurumba Gounden Jagir.
3. Jadaya Gounden Jagir.
4. Ariya Gounden Jagir.

Chingleput.

1. Kalahasti.

Coimbatore.

1. Uttukuli.
2. Samattur.
3. Kottampatti.
4. Poravipalaiyam.
5. Ramapatnam.
6. Metratti.
7. Tungavi.

Coimbatore—cont.

8. Jottampatti.
9. Vedapatti.

Ganjam.

1. Parlakimedi.
2. Dharakota.
3. Kallikota.
4. Pedda Kimedi.
5. Chikati.
6. Mandasa.
7. Chinna Kimedi.
8. Serugada.
9. Humma.
10. Bodogada.
11. Surangi.
12. Jarada.
13. Budarasingi.
14. Tarla.
15. Biridi.
16. Paluru.

Godavari.

1. Pithapuram.
2. Nidadavolu, Baharzhalli and Ambarapeta.
3. Vegayammapeta.
4. Tangellamudi.
5. Bhadrachalam.
6. Kotipalli in the Vizianagram zamindari.
7. Telikicherla.
8. Vilasa.
9. Janupalle.
10. Jalimudi.

[1] Sections 9 to 15 were added by section 2 of the Madras Impartible Estates (Second Amendment) Act, 1934 (Madras Act XII of 1934).

[2] Included by Madras Act VI of 1909.

Kistna.

1. Devarakota.
2. Munagala Paragana.
3. Chintalapati Vantu.

Madura.

1. Ramnad.
2. Sivaganga.
3. Rettayambadi.
4. Peraiyur.
5. Saptur.
6. Bodinayakkanur.
7. Gandamanayakkanur.
8. Ayakkudi.
9. Idaiyangottai.
10. Ammayanayakkanur.
11. Puliyankulam.
12. Jyotilanayakkanur.
13. Uttappanayakkanur.
14. Doddappanayakkanur.
15. Nadukkottai.
16. Melakkottai.
17. Sandaiyur.
18. Tevaram.
19. Erasakkanayakkanur.
20. Mambarai.

Nellore.

1. Venkatagiri.
2. Chundi.
3. Mutyalapadu.
4. Kalahasti.

Salem.

1. Shulagiri Palaiyappattu.
2. Ankusagiri Palaiyappattu.
3. Periya Kalrayan Nad.
4. Chinna Kalrayan Nad.
5. Ariya Gounden Jagir.

Tanjore.

1. Gandarvakottai.
2. Kallakottai.
3. Konur.
4. Sillattur.
5. Palayavanam.

Tanjore—cont.

6. Pappanadu.
7. Singavanam.
8. Madukkur.
9. Neduvasal.
10. Sendangudi.
11. Attivetti.

Tinnevelly.

1. Ettiyapuram.
2. Sivagiri.
3. Settur.
4. Urkkadu.
5. Singampatti.
6. Uttumalai.
7. Maniyachi.
8. Kadambur.
9. Attankarai.
10. Naduvakurichchi Minor Division.
11. Talaivankottai.
12. Alagapuri.
13. Mannarkottai.
14. Sennalkudi and Kadambankulam.
15. Kollapatti.
16. Kollankondan.
17. Avudaiyapuram.

Trichinopoly.

1. Marungapuri.
2. Kadavur.
3. Turaiyur.
4. Udaiyarpalaiyam.

Vizagapatam.

1. Vizianagram.
2. Bobbili.
3. Saluru.
4. Madugula.
5. Jeypore.
6. Kurupam.
7. Sangamvalasa.
8. Kasipuram.
9. Pachipenta.
10. Andra.
11. Saripalli Bhimavaram.